Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Craig-Eaton et. al. v. Hopton Holdings Ltd.*, 2018 BCCRT 706

B E T W E E N :

Marion Elizabeth Craig-Eaton and Donald Bruce Eaton

APPLICANTS

A N D :

Hopton Holdings Ltd.

RESPONDENT

A N D :

Marion Elizabeth Craig-Eaton and Donald Bruce Eaton

RESPONDENTS BY COUNTERCLAIM

AMENDED REASONS FOR DECISION

Tribunal Member: Michael F. Welsh, Q.C.

INTRODUCTION

1. Good fences do not make good neighbours when there is a dispute about their location. The applicants, Marion Elizabeth Craig-Eaton and Donald Bruce Eaton, object to their neighbour, the respondent, Hopton Holdings Ltd., taking down a portion of a fence between their properties and building a new fence, using some wood from the old one. For ease of reference, I refer to the applicants collectively as the Eatons and the respondent as Hopton. I refer to Donald Bruce Eaton as Donald Eaton.

2. The Eatons seek 3 orders. The first is that Hopton obtain a further posting plan survey. The second is for either return of the wood used from the old fence or $624.55 as compensation for that wood. The third is for $1,254.40 in damages for removal of 16 vine maples they say were on their property.

3. Hopton counterclaims for 2 orders. The first is for payment of $815.07, being half the cost of a posting plan survey. The second is for $1,500, being half the cost of removal of two cottonwood trees. Marion Elizabeth Craig-Eaton represents the Eatons. The respondent Hopton is represented by Christopher Hopton.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I will decide to resolve this dispute through the parties' written submissions and supporting

documents as I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

    a. order a party to do or stop doing something;

    b. order a party to pay money;

    c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in the Eatons' claims are:

    a. Is Hopton legally obligated to obtain a further posting plan survey?

    b. Are the Eatons entitled to return of the wood or $624.55 for the value of wood from the old fence that Hopton used in building the new portion of fence?

    c. Did Hopton trespass in removal of the vine maples and if so, what are the damages payable?

9. The issues in Hopton's counterclaim are:

    a. Did Donald Eaton agree to pay $815.07, being half the cost of the posting plan survey the respondents have already obtained?

    b. Did the Donald Eaton agree to pay $1,500 toward the cost of removal of 2 cottonwood trees?

EVIDENCE

10. The Eatons and Hopton are neighbours in a rural area of Langley. The Eatons bought their property in 1995 and Hopton bought in 1999. At the times the parties bought, there was an existing barbed wire fence along what they understood as the property line between their properties. In 1997 the Eatons built another wooden fence on their property, about 2 feet in on their side from the barbed wire fence.

11. In the fall of 2017, the parties discussed removing 2 cottonwood trees on the Hopton property. The Eatons wanted them removed as a potential hazard. The Eatons admit that Donald Eaton verbally offered a financial contribution of $1,500 toward the cost.

12. Texts and emails provided by the Eatons show that the parties also agreed in the fall of 2017 to remove some brambles along the property line to make a survey easier.

13. Those texts and emails also show both parties sought quotations they shared with each other of the cost to remove the trees. Following this, Hopton retained a tree service to do the removal.

14. After relations between the parties soured, the Eatons said they would not pay half the tree removal cost. They believe Hopton essentially misled them into agreeing to pay by indicating it could not afford it without assistance.

15. The only evidence provided about what was verbally agreed, other than the parties' statements, are some letters. The first, dated December 8, 2017, is from Hopton seeking confirmation of an earlier "handshake" deal between Donald Eaton and Christopher Hopton that the Eatons will pay half of the survey and the tree removal. The second is a follow-up letter dated December 18, 2017, looking for a response. The third is from the Eatons, dated January 19, 2018, stating they will not pay anything for the tree removal as Hopton "grossly misrepresented" its ability to pay for that tree removal, and denying ever agreeing to pay any of the survey costs.

16. In July 2018 Hopton obtained and paid for a posting plan survey to identify the boundary between the two properties. The survey was registered in the Land Title Office. Following receipt of the survey, Hopton took down portions of the existing fence and built a new one. The parties agree the new fence is some 7 feet closer on the Eatons' side. Hopton asserts all construction was within its own property lines as determined by the July 2018 survey.

17. Hopton admits it used some of the wood from the wooden fence built by the Eatons in 1997 as part of the new fence it built in 2018. Its position is that, as the fence was on its property, it was entitled to do so.

18. The Hoptons[1] deny ever agreeing to paying any of the posting plan survey cost.

ANALYSIS

19. It is up to the Eatons to prove their claims on the balance of probabilities. In this case, with one exception, I find they have not done so. It is also up to Hopton to prove its counterclaim.

20. I find that the evidence does not prove that Hopton trespassed when removing the portion of old fence and building the new fence in 2018. It has provided a registered posting plan survey showing the property line between the two properties. It has stated the new portion of fence is on its property, as established by that line and that the old portion of fence was also on its property. The Eatons do not provide any evidence to counter this.

21. If the Eatons believed the Hopton survey is inaccurate, it was open to them to obtain a second one. However, the only evidence I have before me is the survey provided by Hopton. The claim for Hopton to obtain another property survey is dismissed.

22. I am unable to determine on the evidence which, if any, of the vine maples that were cut down by Hopton were on the Eatons' property. Further, even if there was a trespass, the Eatons have not provided any evidence that those vine maples had

any value. As a result, the Eatons' claim for damages for removal of the vine maples is dismissed.

23. This leaves the claim for the wood taken from the old fence. I find that the wood taken from the old fence and used by Hopton to build the new portion of fence in 2018 belonged to the Eatons. Again, there is a problem of lack of evidence of the amount of wood used or of its value has been provided. However, it is clearly sound wood, as it was used in the new fence, so it has some value.

24. I must fix a number for that value. I estimate the value at $250 and find Hopton must pay that sum to the Eatons for the wood, as it is unrealistic to order Hopton return it.

25. I now turn to Hopton's two counterclaims. As noted earlier, it is up to Hopton to prove its case for each of them.

26. I find there was a verbal agreement between the parties that the Eatons pay $1,500 toward the cost of removing the 2 cottonwood trees. The Eatons later concluded, as Hopton went ahead with the work, that Hopton could afford the cost and had misled them otherwise. Beyond the Eatons stating this conclusion in their submission, there is no evidence to support this suspicion. A verbal agreement is still enforceable, if proven. I find their "handshake" agreement obligates them to pay Hopton the $1,500, and I so order.

27. I find that the evidence is insufficient to prove the parties had an agreement that the Eatons would pay half the survey costs. While, as noted earlier, there is some evidence, and while it may be that the Eatons did not keep their word, this has not been established on a balance of probabilities.

28. I dismiss Hopton's counterclaim for payment of half the survey costs.

29. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses.

30. As the Eatons were largely unsuccessful, I decline to order that Hopton pay their claimed tribunal fees and dispute-related expenses.

31. As Hopton was largely successful in defending the Eatons' claims and was successful in the larger part of the counterclaim, I find that Hopton is entitled to reimbursement of $125 in tribunal fees as requested.

32. As the evidence does not establish when the trees were removed and when the fence was built, I fix the date for calculation of pre-judgment interest on both judgments as August 15, 2018, as I find both happened by that time.

33. In calculating the amount of Hopton's judgment against the Eatons in the Order section below, I deduct as a set-off the amount that Hopton owes to the Eatons.

ORDERS

34. I order the respondent, Hopton Holdings Ltd., is liable to pay the applicants, Marion Elizabeth Craig-Eaton and Donald Bruce Eaton, a total of $252.80, broken down as follows:

    a. $250 in damages;

    b. $0.86 in pre-judgment interest under the *Court Order Interest Act*.

35. Within 31 days of the date of this order, I order the applicants, Marion Elizabeth Craig-Eaton and Donald Bruce Eaton, shall pay the respondent, Hopton Holdings Ltd., a total of $1,379.32, broken down as follows:

    a. $1,500 towards the cost of removal of the 2 cottonwood trees,

    b. Plus $5.18 in pre-judgment interest under the *Court Order Interest Act*,

    c. Plus $125 in tribunal fees,

    d. Less the sum of $250.86 owed by the respondent to the applicants.

36. The respondent is entitled to post-judgment interest on this amount, as applicable.

37. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

38. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Michael F. Welsh, Q.C., Tribunal Member

[1] This amended decision corrects the spelling of the name of the respondent in paragraphs 18, 21 and 35. These corrections are made in accordance with Section 64 of the *Act*.